

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF THE RATES OF KENTUCKY-) CASE NO. 2004-00103
AMERICAN WATER COMPANY)

ORDER

The Attorney General (“AG”) has moved for leave to submit surrebuttal testimony at the scheduled hearing in this matter. Kentucky-American Water Company (“Kentucky-American”) has responded in opposition to this motion. Finding that the AG has failed to show good cause to permit the filing of such testimony, we deny.

The AG offers three arguments in support of surrebuttal testimony. First, he contends that Kentucky-American’s presentation of evidence and responses to discovery were not completed prior to the filing of the written testimony of the AG’s witnesses and thus the AG’s witnesses were deprived of “an opportunity to comment on or otherwise present evidence regarding this subsequent evidence.” AG’s Motion at 1. Second, he asserts that surrebuttal testimony provides the opportunity to present evidence “regarding adjustments, amendments, and changes in the Company’s (or another party’s) positions subsequent to the filing of the AG’s pre-filed direct testimony evidence.” Id. at 1 – 2. Third, surrebuttal testimony allows the AG to address new evidence and issues that Kentucky-American witnesses presented in their rebuttal testimony. Id. at 2.

As a general rule, no party has a right to reply to evidence given on rebuttal or to introduce surrebuttal testimony unless a new matter is introduced in rebuttal. 75 Am.

Jur. 2d Trial § 377 (2004). This Commission has previously held that a party seeking to introduce surrebuttal testimony must, unless it bears the burden of proof, demonstrate that good cause for such testimony exists. Louisville Gas and Electric Co., Case No. 2002-00232 (Ky.PSC Nov. 22, 2002) at 2.

In the present proceeding, Kentucky-American as the applicant for a rate adjustment bears the burden of demonstrating the reasonableness of its proposed rates. KRS 278.190(3). Except in those instances that he advances proposals in areas or on issues that Kentucky-American has not addressed in its application, the AG has no burden of proof to meet.

Based upon our review of the AG's motion, we find that the AG has failed to demonstrate good cause for surrebuttal testimony and that his motion should be denied. He does not identify any new matter raised in the rebuttal testimony of Kentucky-American's witnesses. The AG also fails to point to any proposal or issue on which he bears the burden of proof and that Kentucky-American has addressed in the rebuttal testimony of its witnesses. Absent such showing, the AG has no entitlement to present surrebuttal testimony.

The Commission finds no merit to the AG's suggestion that he has been denied due process. We have taken great care to ensure that the AG has a meaningful opportunity to present his case and challenge the other parties' evidence. The present procedural schedule has allowed the AG the opportunity to conduct extensive discovery on the utility's direct testimony and rebuttal testimony. Moreover, he may examine at hearing all witnesses who have presented direct or rebuttal testimony. Finally, following the completion of the hearing, he may submit a written brief in which he may present

and elaborate on his own positions and comment on and rebut any opposing arguments. These actions are consistent with the very notion of due process.

The Commission advises the AG that he may renew his motion for surrebuttal testimony if he can clearly state the facts that entitle him to present such testimony and specifically identify those matters that such testimony would address. Such motion should be filed no later than November 5, 2004 and should contain a proffer of the written surrebuttal testimony. We will entertain arguments on such motion prior to hearing evidence at the scheduled hearing in this matter

IT IS THEREFORE ORDERED that:

1. The AG's Motion for Surrebuttal is denied.
2. If the AG wishes to renew his motion, he shall file such motion with the Commission no later than November 5, 2004 and shall file with his motion his proffered written surrebuttal testimony.

Done at Frankfort, Kentucky, this 27th day of October, 2004.

By the Commission

ATTEST:


Executive Director

Case No. 2004-00103